

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 03-0072**  
**Sales and Use Tax**  
**For the Years 1999-2001**

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**ISSUE**

**I. Tax Administration- Ten Per Cent (10%) Negligence Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

The taxpayer is a not-for-profit corporation operating a golf course. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested a portion of the assessment and the penalty. After the hearing was scheduled, the taxpayer withdrew its protest to the tax assessment. The taxpayer requested that the determination on the applicability of the penalty be made on the basis of the contents of the file.

**I. Tax Administration- Ten Percent (10%) Negligence Penalty**

**DISCUSSION**

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts

and circumstances of each taxpayer.

The taxpayer failed to collect and remit sales tax on soft drinks, snacks, and sandwiches based on its incorrect interpretation of the effects of not-for-profit status. The department makes easily available the rules and regulations concerning the collection and remittance of sales tax on food for immediate consumption. The taxpayer failed to read and follow the instructions related to the collection and remittance of sales tax by not-for-profit corporations on sales of food for immediate consumption. This breach of the taxpayer's duty constitutes negligence.

### **FINDING**

The taxpayer's protest is denied.

KMA/JMM/JMS--032011